

Decision 03-06-052 June 19, 2003

**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA**

Application of Pacific Gas and Electric Company (PG&E) (U 39 M) for an Order Finding that PG&E May Grant a License Pursuant to General Order 69-C to the Marina View Heights Association for Installation, Maintenance and Use of a Community Boat Dock.

Application 03-03-009  
(Filed March 7, 2003)

**ORDER CONFIRMING THAT PACIFIC GAS AND ELECTRIC COMPANY  
(U 39 M) MAY GRANT A LICENSE TO THE MARINA VIEW HEIGHTS  
ASSOCIATION PURSUANT TO GENERAL ORDER 69-C  
AND DISMISSING APPLICATION**

On March 7, 2003 PG&E filed its Application<sup>1</sup> for an order approving a license for installation, maintenance and use of a community floating dock on its property in Bass Lake, CA (License). The application requested a finding that the proposed License is permissible without the need for Commission review and approval under General Order (G.O.) 69-C<sup>2</sup> or, in the alternative, that the

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<sup>1</sup> *Application of Pacific Gas and Electric Company for an Order Finding that PG&E may Grant a License for Installation, Maintenance, and use of a Community Floating Boat Dock Pursuant to General Order 69-C or, in the Alternative, for Authorization Under Public Utilities Code Section 851 to Grant a License to Marina View Heights Association for Installation, Maintenance and Use of a Community Boat Dock.*

<sup>2</sup> General Order 69-C, adopted July 10, 1985 provides, in relevant part, "that all public utilities covered by the provisions of Section 851 of the Public Utilities Code \* \* \* are hereby authorized to grant easements, licenses or permits for use or occupancy on, over or under any portion of the operative property of said utilities for rights of way, private roads, agricultural purposes, or other limited uses of their several properties

*Footnote continued on next page*

Commission should authorize the agreement pursuant to Section 851 of the Public Utilities Code.<sup>3</sup> For the reasons set out below, we confirm that PG&E may

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without further special authorization by this Commission whenever it shall appear that the exercise of such easement, license or permit will not interfere with the operations, practices and service of such public utilities to and for their several patrons or consumers; PROVIDED HOWEVER, that each such grant \* \* \* shall be made conditional upon the right of the grantor, either upon order of this Commission or upon its own motion, to commence or resume the use of the property in question whenever, in the interest of its service to its patrons or consumers, it shall appear necessary or desirable to do so.”

<sup>3</sup> Section 851 reads:

No public utility other than a common carrier by railroad subject to Part I of the Interstate Commerce Act (Title 49, U.S.C.) shall sell, lease, assign, mortgage, or otherwise dispose of or encumber the whole or any part of its railroad, street railroad, line, plant, system, or other property necessary or useful in the performance of its duties to the public, or any franchise or permit or any right thereunder, nor by any means whatsoever, directly or indirectly, merge or consolidate its railroad, street railroad, line, plant, system, or other property, or franchises or permits or any part thereof, with any other public utility, without first having secured from the commission an order authorizing it so to do. Every such sale, lease, assignment, mortgage, disposition, encumbrance, merger, or consolidation made other than in accordance with the order of the commission, authorizing it is void. The permission and approval of the commission to the exercise of a franchise or permit under Article 1 (commencing with Section 1001) of Chapter 5 of this part, or the sale, lease, assignment, mortgage, or other disposition or encumbrance of a franchise or permit under this article shall not revive or validate any lapsed or invalid franchise or permit, or enlarge or add to the powers or privileges contained in the grant of any franchise or permit, or waive any forfeiture. Nothing in this section shall prevent the sale, lease, encumbrance or other disposition by any public utility of property which is not necessary or useful in the performance of its duties to the public, and any disposition of property by a public utility shall be conclusively presumed to be of property which is not useful or necessary in the performance of its duties to the public, as to any purchaser, lessee or encumbrancer dealing with such property in good faith for value; provided, however, that nothing in this section shall apply to the interchange of equipment in the regular course of transportation between connecting common carriers.

grant the License pursuant to G.O. 69-C without prior Commission approval. We therefore dismiss the Application because we need not consider further.

G.O. 69-C establishes three key criteria for permitting the granting of easements, licenses or similar interests without prior Commission approval. The interest granted must be for “limited use;” not interfere with the utility’s operations, practices and service to its customers; and be revocable either upon order of the Commission or upon the utility’s own determination that it is desirable or necessary in the interest of service to its patrons or consumers. The license presented here meets all three criteria.

**Limited use**

The proposed license affects only a small fraction of the PG&E property at Bass Lake. The facility to be installed consists of a community floating dock, approximately 240 feet long, constructed of pressure-treated wood, polystyrene plastic foam flotation logs, and galvanized hardware. It will attach to an existing walkway at the location of the previous Marina View sheriff’s dock. A new 30-foot gangway will be attached to the existing walkway platform. At the end of the gangway, rollers will rest on the new floating dock. Two stainless steel chains tethered to 800 lb anchors set on the lake bottom will keep the dock in position. Use of the floating dock is limited to members and guests of the Licensee, a property owners’ association. It will accommodate up to sixteen (16) watercraft.

Although the dock is a fairly substantial structure, it is not permanently affixed to the lake bottom and can be readily removed if either PG&E or the Commission should so order.

### **Non-Interfering with Utility Operations and Practices**

In its application, PG&E has affirmatively represented that use of the proposed dock will not create a nuisance, be incompatible with the overall recreational usage of Bass Lake, or interfere with the company's provision of quality service.

### **Revocability**

The proposed License contains the following language regarding revocability in Paragraph 3:

PG&E may terminate this License Agreement, at any time, for any reason or no reason including, without limitation, pursuant to the provisions of General Order No. 69-C of the California Public Utilities Commission (the "CPUC") upon thirty days written notice to the Licensee.

This language unequivocally establishes the right of PG&E to terminate the License as required by G.O. 69-C.

### **Comments on Draft Decision**

This is an uncontested matter in which the decision grants the requested relief. Therefore, pursuant to Section 311(g)(2) of the Public Utilities Code, the otherwise applicable 30-day period for public review and comment is being waived.

### **Assignment of Proceeding**

Susan Kennedy is the Assigned Commissioner and Karl J. Bemederfer is the assigned Administrative Law Judge in this proceeding.

### **Findings of Fact**

1. The proposed License is for "limited use" as defined in G.O. 69-C.
2. The proposed License will not interfere with PG&E's operations, practices, or provision of services to its customers.
3. The proposed License is revocable at will.

### **Conclusion of Law**

1. The proposed License is authorized by G.O. 69-C, and the requirement for prior Commission approval of the proposed License pursuant to Section 851 does not apply.

### **O R D E R**

#### **IT IS ORDERED** that:

1. Pacific Gas and Electric Company's Application for authority to grant a license pursuant to General Order 69-C to Marina View Heights Association for installation, maintenance and use of a community boat dock is dismissed.

2. Application 03-03-009 is closed.

This order is effective today.

Dated June 19, 2003, at San Francisco, California.

MICHAEL R. PEEVEY  
President  
CARL W. WOOD  
LORETTA M. LYNCH  
GEOFFREY F. BROWN  
SUSAN P. KENNEDY  
Commissioners